

**BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION**

*In Re:* Neill's Home Improvements )  
Dist. 11, Map 62, Control Map 62, Parcel 2.04P ) Bedford County  
S.I. 001 )  
Tax Year 2006 )

## INITIAL DECISION AND ORDER FINDING JURISDICTION

### Statement of the Case

The Bedford County Assessor of Property ("Assessor") has valued the subject property for tax purposes as follows:

APPRAISAL

\$35,000

## ASSESSMENT

\$10,500

On December 14, 2006, the State Board of Equalization ("State Board") received an appeal by the taxpayer. As indicated on the appeal form, this assessment was not appealed to the Bedford County Board of Equalization ("county board") during its regular annual session for tax year 2006.

The undersigned administrative judge conducted a hearing of this matter on September 6, 2007 in Bedford County. In attendance at the hearing was the appellant, Shane Neill and Ronda Helton Clanton, Assessor of Property for Bedford County, Tennessee.

Findings of Fact and Conclusions of Law

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeal. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b) (2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such **reasonable cause**, the [state] board shall accept such appeal from the taxpayer up to March 1<sup>st</sup> of the year subsequent to the year in which the assessment is made (*emphasis added*).



In analyzing and reviewing T.C.A. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control.** (*Emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovetz*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus, for the State Board of Equalization to have jurisdiction in this appeal, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Bedford Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief.

In this case, the taxpayer, Mr. Neill did not appeal to the Bedford County Board of Equalization in a timely fashion because he never received Notice of the Assessment. The records show that the Notice was sent with the wrong 'zip code' placed on the Notice by the County. Mrs. Clanton testified that while this is an unfortunate error it does sometimes occur<sup>1</sup>. She also stated that in her experience sometimes the Post Office will correct the error and send the document on to the correct 'zip code' and sometimes it will not, she stated that she does not know if that occurred here. She also indicated that the Assessor's Office, if they get a return from the Post Office will research and try to find the correct information to re-send the information, but they purge their records after a year so there is no record as to what occurred in this case.

It is undisputed that in 2006 the property owner did not file a tangible personal property schedule, (Tenn. Code Ann. § 67-5-903) by the March 1<sup>st</sup> statutory deadline. As a result, the Assessor levied a "forced assessment" on the "business" in the amount shown above. The assessment includes a statement of the taxpayer's right of appeal to the county board and specified the last day on which such an appeal would be accepted. The notice also advises that **"Failure to appeal the classification and/or assessment to the (county board) may result in the assessment becoming final without further right of appeal."**

A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and (if necessary) state boards of equalization; however, "such remedy shall be conditioned upon the filing with **the board of equalization** a complete listing or

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<sup>1</sup> The wrong 'zip code' was keyed in by the Assessor's staff.



schedule of all the tangible personal property owned or used by the taxpayer in the operation of the taxpayer's business on the same form as required to be filed with the assessor." [Emphasis added.] Further, Tenn. Code Ann. § 67-5-1412(b) (1) provides that:

**The taxpayer or owner must first make complaint and appeal to the local board of equalization** unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508. [Emphasis added.]

In 1991, the General Assembly amended Tenn. Code Ann. § 67-5-1412(e) by adding the following language:

The taxpayer or owner shall have the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the (State Board) shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

The Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a **jurisdictional prerequisite** which cannot be waived by the consent of the parties. [Emphasis added.]Tenn. Atty Gen. Op. 92-62, p. 10.

In this case, the taxpayer subsequently did in fact file the required schedule which showed substantially less personalty was owned. The taxpayer did not know of the assessment until he received a copy of the actual tax bill. Mr. Neil stated that once he was notified of the erroneous assessment he let the County Assessor's Office know.

In the opinion of the Administrative Judge the taxpayer has demonstrated that there is reasonable cause to excuse his failure to go to the County Board.

Respectfully, based on the evidence in the record, the administrative judge finds that the taxpayer has carried his burden to prove he is entitled to the relief he is requesting<sup>2</sup>, the new schedule has been accepted by the Bedford County Assessor and the appropriate changes can be made.

#### Order

It is, therefore, ORDERED that State Board has jurisdiction to hear his appeal.

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<sup>2</sup> In the hearing of an appeal concerning the assessment of property the party seeking to change the current assessment shall have the *burden of proof*. Contested Case Procedures, Rules of the State Board of Equalization, Rule 0600-1-.11(1).

ENTERED this 18<sup>th</sup> day of October, 2007.



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ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Shane Neill  
Ronda Helton Clanton, Assessor of Property